MUTUAL BENEFIT INSURANCE—RIGHTS OF BENEFICIARIES—OVERHISER ET AL. v. OVERHISER, 59 Pac. 75 (Colo.).—The A. O. U. W. by-laws provide that the beneficiary shall be named in the certificate and shall be within one of certain designated classes, and in case of death, provides that the fund shall go to certain heirs in the absence of any direction by the insured. A wife obtained a divorce prior to the death of her husband, who held an insurance in the above-named society. *Held*, that divorce was not the legal equivalent to the death of the beneficiary and that the heirs could not take the fund.

There seems to be a wide diversity of opinion by jurists on this question. A wife, where divorced, has generally lost her rights. *Tyler* v. *Odd Fellows' Mut. Relief Assoc.*, 154 Mass. 134. Nevertheless, the decision in the case under review seems correct. The contract of insurance did not need any interpretation, and when entered into the beneficiary was competent to take under the by-laws. Nor was there any prohibition in the by-laws incapacitating the beneficiary from taking the fund owing to a legal separation. It is a well-known principle that the courts treat a policy of life insurance as something like a testament. *Bolton* v. *Bolton*, 73 Me. 299. Construing the policy as a will, the beneficiary named therein would take, as the insured failed to revoke the instrument by the designation of a new beneficiary.

NEW TRIAL—NEWLY-DISCOVERED EVIDENCE—HILL v. STATE, 53 S. W. 845 (Tex.).—Where defendant moved for a new trial on the ground of newly-discovered evidence to prove insanity. *Held*, that it should be granted, though in strictness the evidence was not newly-discovered.

We are unable to find authorities in any State except Texas which have followed this exception to the rule for a new trial upon newly-discovered evidence, where the plea is insanity. In Texas this exception was made in *Schuenler* v. *State*, 19 Texas, App. 872, and followed in *Horhouse* v. *State*, 50 S. W. 362, and the Texas courts seem disposed to strengthen these precedents.

PERSONAL INJURIES—TRIAL—PHYSICAL EXAMINATION—WANCK v. CITY OF WINONA, 80 N. W. 851 (Minn.).—*Held*, in an action to recover damages for a personal injury, that the trial court, upon application by the defendant, could order the plaintiff to submit himself to a physical examination by disinterested physicians, under penalty of having his suit dismissed upon refusal to obey; and that the court erred in refusing to so order, though defendant's physician had previously attended plaintiff, and had opportunity to examine him.

The rule here laid down accords with that in many States, but conflicts with that in others, and with that applied by the Supreme Court of the United States in *Union Pacific R. Co.* v. *Botsford*, 141 U. S. 250, where it is asserted that no such power is vested in the court, either by the common law or by act of Congress. Justice Brewer, however, in a dissenting opinion, lays down a rule very like that given in the present case. He says: "It is said that there is a sanctity of person which may not be outraged. We believe that truth and justice are more sacred than any personal consideration."

PRESUMPTION AS TO COMMON LAW—SISTER STATES—BLETHEN v. BONNER ET AL., 53 S. W. 1016 (Tex.).—Where the Constitution of Massachusetts, adopted in 1780, providing that all laws previously adopted in the Colony of Massachusetts Bay and usually practiced in the courts of law shall remain in full force until repealed by the Legislature, such parts only excepted as are repugnant to the Constitution, was offered in evidence. *Held*, to be insufficient proof in an action in Texas to establish the fact that the common law was in force when such Constitution was adopted.

It has been a familiar rule that the courts of one State will presume the common law to be in force in a sister State at a given time, in the absence of evidence. The Texas courts do not follow it, however, and say in this case that they do not believe the "indulgence in presumptions" the safest guide.